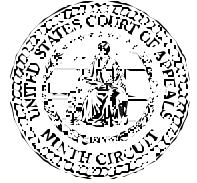


Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
95 Seventh Street
Post Office Box 193939
San Francisco, California 94119-3939



Cathy A. Catterson
Clerk of Court

(415) 556-9800

*This summary constitutes no part of the opinion of the court.
It has been prepared by court staff for the convenience of the reader.*

Southwest Voter Registration Education Project v. Shelley, 03-56498

Opinion Filed: 9/15/03

Panel: Judge Harry Pregerson Judge Sidney R. Thomas
Judge Richard A. Paez (per curiam)

The panel reversed the district court's denial of a preliminary injunction in plaintiffs' action alleging that the use of obsolete punchcard voting systems in the October 7, 2003, California special election in some counties (Los Angeles, Mendocino, Sacramento, San Diego, Santa Clara and Solano counties) rather than others will deny voters equal protection of the laws in violation of the United States Constitution. At the special election, California voters will be asked to vote on the recall of the California governor and two state propositions: Proposition 53, a proposed amendment to the California Constitution that would dedicate part of the state budget each year to state and local infrastructures, such as water, highway, and park projects; and Proposition 54, another proposed amendment to the California Constitution that would prevent the state from collecting or retaining racial and ethnic data about health care, hate crimes, racial profiling, public education, and public safety. The panel held that the district court erred as a matter of law in denying the preliminary injunction with respect to the vote on Propositions 53 and 54 and the gubernatorial recall.

The panel concluded that the plaintiffs had demonstrated a likelihood of success on the merits of their equal protection claim that there is no rational basis for using, in some counties and not others, pre-scored punchcard voting systems that the California Secretary of State has decertified as "unacceptable." The panel further held that the plaintiffs' action is not likely to be barred by the *res judicata* effect of a prior action challenging the use of pre-scored punchcard ballots,

Common Cause v. Jones (C.D. Cal. 2002) (No. 01-03470), nor by the doctrine of laches.

The panel agreed with the district court that the plaintiffs would suffer irreparable harm if preliminary injunction relief is not granted because there is no possible post-election remedy.

The panel next concluded that the balance of hardships tipped sharply in favor of plaintiffs as to the question of voting on the state propositions and slightly in favor of plaintiffs as to the question of voting on the gubernatorial recall.

In evaluating the public interest, the panel held that the balance falls heavily in favor of postponing the election for a few months.

Accordingly, the panel enjoined the Secretary of State from conducting an election on any issue on October 7, 2003.

Next Possible Procedural Steps: The panel directed the Clerk of Court to issue the mandate forthwith, but stayed the order for seven days to allow the parties to seek further relief from the panel's decision, if they so desire. The parties may seek panel rehearing or en banc rehearing in this court, and they may petition for review in the United States Supreme Court.

Lead Counsel for Appellants:

Mark D. Rosenbaum	213/977-9500
Catherine E. Lhamon	213/977-9500
Daniel P. Tokaji	614/292-6566

Lead Counsel for Appellee:

Douglas J. Woods	916/324-8835
------------------	--------------

Lead Counsel for Intervenor:

Charles P. Diamond	310/553-6700
--------------------	--------------